

ZONING BOARD OF APPEALS

This hearing on Tuesday March 3, 2026, called to order by chairman, Harry Kwiek at 7:00PM.

Members Present:

Harry Kwiek
John Jiminez
Greg Kalinowski
Shawn Pralow
Robert Schaefer, Alternate

Members Absent:

James Lembke, Alternate
Ron Carey

Also Present:

Phyllis Todoro, Town Attorney
Joe Colern Building Inspector
Jennifer Khan, Secretary

Appeals case #1500 for John Garas Esq appearing with his client, Mr. Wujek, the owner of 5455 Clinton Street. Mr. Wujek by Mr. Garas objects to the issuance of the building permit for a house on the property located at 5431 Clinton Street, Elma, NY. They are requesting an interpretation on the zoning code 144-99 Residential C.

Mr. Garas expresses his opinion that the building permit for 5431 Clinton Street was issued in error since residential C requires a minimum frontage of 100 feet. He is requesting that the building permit for that property be annulled since the property has only 30 feet on Clinton Street and is what he refers to as a flag lot or pursuant to N.Y.S. Town Law Section 280-a.

Mr. Garas states that the building permit was issued in error because he believes that N.Y.S. Town Law Section 264 requires that any Town must issue laws adopted by an ordinance not by a resolution. He also argues that since the Town Residential 280-A Development Code was adopted by resolution it cannot be upheld.

Elma Town Board approved the below resolution "Residential 280-A Developments on April 7, 2004:

Single lot 280A development.

- 1. requires at least 20 feet of frontage on a public highway.**
- 2. Requires at least 2-acre lot size as a minimum.**

3. **Requires with and depth footprint of a regular lot for the zoning area where the lot is located. This footprint can be located anywhere on the 2-acre parcel.**
4. **Any strip of land less than 50ft in width is not to be included in the 2 Acre calculation.**
5. **Front, side and rear setbacks are to be required in the zone where the property is located.**
6. **Building Inspector can approve one lot per parcel per calendar year.**
7. **More than one 280-a per calendar year per parcel will need town board approval.**

Procedures

1. **The normal documents (search and survey) plot plans ext. as determined by the building inspector. will be required at the time of application.**
2. **If all requirements of this resolution are met, the building inspector shall have authority to approve the 280A development without further reference to other town authority.**
3. **If the proposed 280A development does not comply with the resolution, then the building inspector shall refer the application to the planning board as if the development were a 280A development.**

Mr. Garas argues that the building permit should be annulled.

Mr. Jimenez stated Section 144-129 of the Town of Elma Code allows for building permits to be issued pursuant to Section 280-a of the Town Law.

Mr. Garas argues that despite N.Y.S. Town Law Section 280-a (5) allowing as little as 15 feet of access being sufficient for ingress and egress for emergency vehicles, the Town Code requires 100 feet of frontage in Residential C.

Mr. Garas submitted a prepared document stating Mr. Wujek's objections to the issuance of the Elma Code Enforcement Officer's issuance of the building permit, a copy of this document is part of the official records.

In summary, Mr. Wujek's objection to the issuance by the Elma Building Department of a building permit for the construction of a house immediately to the south of his home is based on four factors:

1. The property in question is zoned Residential C and does not have the necessary frontage.

2. The house is surrounded by a FEMA flood plain. Runoff and discharges from the house adversely affect drainage patterns along the north side of Mr. Wujek property and will exacerbate an already poor drainage situation.
3. The house adversely affects sight lines from his rear yard.
4. The construction of a house so near to his south line negatively affects the value of his property.

A discussion ensued concerning the fact that Mr. Wujek had only 68 feet of frontage and why his lot did not comply with the 100 feet frontage required in Residential C zone. Mr. Wujek indicated he wanted to buy the lot in question and was going to turn it over to the state, but Mr. and Mrs. Duffy purchased it before him.

A discussion also ensued about the other surroundings approved N.Y.S. 280-a lands and whether building permits could be granted for those lands.

Mr. Kalinoski states that in his opinion Mr. Wujek's argument of the value of the property being diminished, and impairment of the sight lines are subjective and difficult to prove.

The Zoning Board discussed that they have allowed Town Code Section 144-129 development in the past with reducing the necessary access pursuant to Elma Town Board resolution Residential 280-A and that there is precedent for allowing these.

Property owners of 5431, Mr. and Mrs. Duffy and their attorney Mr. Jeff Palumbo were present.

Mr. Jeff Palumbo stated that the documents submitted are not relevant to the issue at hand. The issue being whether the building inspector did not have the authority to issue a building permit.

Mr. Palumbo argued that Mr. Garas' arguments fall apart since the Town Code Section 144-129 indicates that a building permit may be granted with less than the required frontage pursuant to N.Y.S. Town Law Section 280-a. Mr. Palumbo argues that it should end the argument since that section states minimum frontage access of only 15 feet whereas in the present case there is 30 feet of frontage. Mr. Palumbo states that the building inspector did his job by issuing the building permit.

Mr. Palumbo states that Mr. Garas' argument that N.Y.S. Town Law Section 264 was not complied with becomes moot when you look to Town Law Section 280-a (4) which states that the "Town Board may, by resolution establish an open development area or areas".

Mr. Palumbo further stated that on point was Town Code Section 144-129 which states, "No building permit shall be issued on any lot that does not have the required frontage on a

road accepted by the town and included on the Official Zoning Map, except as provided in Section 280-a of the Town Law. Based upon that section, the Building Inspector correctly issued the building permit.

Mr. Palumbo stated that the Town of Elma has a long-standing precedent of allowing 280-a developments.

Mr. Palumbo states that the only reason we are present is to determine whether or not the Building Inspector acted in accordance with his authority to issue the building permit to Mr. and Mrs. Duffy which Mr. Palumbo argues in the affirmative.

Mr. Kwiek asked if there was anyone in favor of the building permit and allowing the house to be built.

Jeanine Choops of 5381 Clinton Street owns 16 acres is in favor of the house. Jeanie walks to the pond on her land stated that there are no wetlands. She thought the house being built by the Duffy's was beautiful and would be a good addition to the area.

No one spoke against.

Mr. Jimenez made the motion as follows: The applicant applies to this body for an interpretation of a decision made by the Town of Elma Building Inspector granting a building permit for construction of a single-family dwelling with a garage at 5431 Clinton Street, in the Town of Elma. This appeal concerns whether the Building Inspector correctly applied the Town Code's frontage requirements as modified by the Town Code's express incorporation of Town Law Section 280-a (Town of Elma Code Section 144-129). The subject parcel is in the Residential C district, where minimum frontage is 100 feet (Town of Elma Code Section 144-99).

Section 144-129 of the Elma Town Code states that no building permit shall be issued on any lot that does not have the required frontage on a road accepted by the Town and included in the official zoning map, "except as provided in Section 280-a of the Town Law".

Section 280-a of the Town Law allows municipalities to approve "flag lots" by defining what constitutes "adequate access" for a building permit. Section 280-a (5) defines "access" as a plot that directly abuts a street or highway with sufficient frontage for emergency vehicles. The statute states that a frontage of 15 feet shall be "presumptively sufficient" for ingress and egress of emergency vehicles. Accordingly, where Town Code Section 144-129 incorporates Town Law Section 280-a, the Building Inspector is authorized to determine whether the lot has "access" within the meaning of Town Law Section 280-a (5) (Town of Elma Code Section 144-129; Town Law Section 280-a (5)).

In Elma, flag lots are generally referred to as “Residential 280-A” lots and are governed by specific standards in the Town Code and New York State Town Law Section 280-a. Elma Town Code Section 144-129 acknowledges that the frontage requirement of Section 144-99 can be reduced as provided in Town Law Section 280-a.

In the Town of Elma, flag lots (Residential 280-A Lots) are subject to stricter requirements. The Town Board, by resolution dated April 7, 2004, approved the Residential 280-A Development resolution, which requires at least 20 feet of frontage on a public highway and at least a two-acre minimum lot size. The property in question has 30 feet of frontage and 8.9 acres.

In order for this Board to make a decision as to the validity of the Building Inspector’s granting of the building permit, this Board must review all of the pertinent sections and attempt to determine the original intent of the Zoning Code. The Zoning Code must be read as a whole. The Town Code and applicable state law incorporated therein. In doing so, the Board notes that Town of Elma Code Section 144-129 expressly incorporates Town Law Section 280-a as the applicable exception to the general frontage-based permit restriction.

We are also aware that this property was approved for a flag lot in the year 2008 by the Building Inspector. While the Town Board later voted in 2014 to prospectively prohibit creation of flag lots, such a decision did not invalidate preexisting flag lots created under the authority of Section 144-129, Town Law Section 280-a (5), and the Town’s Residential 280-A Development framework. As a result of the above, I move that the granting of the building permit by the Building Inspector was, in fact, a proper interpretation of Town Law. Mr. Kalinowski seconded the motion.

5 yays

0 nays

The Board approved the motion, stating that the Building Inspector was correct in issuing the building permit.

Respectfully submitted,

Jennifer Kahn, Zoning Board Secretary Drafted but not approved by board.